

REMARKS

Claims 26-32 and 36-43 are pending in this application. Applicants respectfully request reconsideration of the claims.

Claims 26-32 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2004/0084709 to Kim, et al. ("Kim"). Applicants respectfully traverse the rejection.

Claim 26 recites three elements: (1) a capacitor contact pad; (2) an integrated capacitor (at least partially) over the capacitor contact pad; and (3) a capacitor contact pad contact that is positioned over the capacitor contact pad.

Examiner has asserted that claim 26 is anticipated by Kim and has asserted that Kim teaches a capacitor contact pad 26; an integrated circuit 30/32/34; and a capacitor contact pad contact 46b. Examiner's rejection of the claim is unclear because Kim does not disclose an element 26; rather Kim discloses an element 26a and a separate element 26b.

Assuming for the sake of argument that Examiner was asserting element 26a of Kim, Applicants respectfully respond that the asserted capacitor contact pad contact of Kim – element 46b – is not positioned over the asserted capacitor contact pad 26a. As is clear from Figure 1b of Kim, element 46b is laterally displaced from element 26a. Hence, Kim lacks the recited claim element of "a capacitor contact pad contact being positioned over the capacitor contact pad."

Assuming, on the other hand for the sake of argument, that Examiner was asserting element 26b of Kim, Applicants respectfully respond that the asserted integrated

capacitor of Kim (30/32/34) is not even partially over asserted capacitor contact pad 26b.

Hence, Kim lacks the recited element of "at least a portion of the integrated circuit being positioned over the capacitor contact pad.

Nothing in Kim remotely teaches or suggests that elements 26a and 26b are or could be a single element and a review of Figure 1b demonstrates that Kim teaches away from such an interpretation. Kim teaches that element 26b contacts a first source/drain region 18 and that element 26a contacts the other source/drain region. If elements 26a and 26b were merely a single element, then the transistor would be short circuited, thus defeating the purpose and teaching. Such an interpretation of the reference is improper.

Therefore Kim lacks the limitations that "at least a portion of the integrated capacitor being positioned over the capacitor contact pad; and ... the capacitor contact pad contact being positioned over the capacitor contact pad." For this reason, Applicants respectfully submit that claim 26 is patentably distinct over Kim.

Because claims 27-32 depend from claim 26, Applicants respectfully submit that claims 27-32 are allowable by reason of their dependence from claim 26 as well as for their further respective defining limitations.

Claims 36-43 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kim. Applicants respectively traverse the rejection.

Claim 36 recites the limitation "at least a portion of the integrated capacitor is positioned over the capacitor contact pad; and ... the capacitor contact pad contact being in electrical contact with the capacitor contact pad and positioned over the capacitor contact pad." For the same reason as discussed in preceding paragraphs, Kim lacks this

limitation. Therefore, Applicants respectfully submit that claim 36 is patentably distinct over Kim.

Because claims 37-43 depend from claim 36, Applicants respectfully submit that claims 37-43 are allowable by reason of their dependence from claim 36 as well as for their further respective defining limitations.

In view of the above, Applicants respectfully submit that this response complies with 37 C.F.R. § 1.116. Applicants further submit that the claims are in condition for allowance. No new matter has been added by this amendment. If the Examiner should have any questions, please contact Applicants' attorney at the number listed below. No fee is believed due in connection with this filing. However, in the event that there are any fees due, please charge the same, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,

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Date



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